

Senate Bill 379

By: Senator Hamrick of the 30th

A BILL TO BE ENTITLED
AN ACT

To amend Code Section 9-11-26 of the Official Code of Georgia Annotated, relating to general provisions governing discovery, so as to provide for a conference of the parties to discuss and plan for discovery in advance of pursuing any actual discovery; to change a provision relating to the sequence and timing of discovery; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 9-11-26 of the Official Code of Georgia Annotated, relating to general provisions governing discovery, is amended by revising subsection (d) as follows:

"(d) Sequence and timing of discovery. A party shall not seek discovery from any source before the parties have conferred as required by subsection (f) of this Code section, except when authorized by court order. Unless the court, upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence; and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery."

SECTION 2.

Said Code section is further amended by adding a new subsection to read as follows:

"(f) Conference of the parties; planning for discovery.

(1) CONFERENCE TIMING. Except in a civil action exempted from initial disclosure under subparagraph (B) of paragraph (3) of this subsection or when the court orders otherwise, the parties shall confer as soon as practicable and in any event at least 21 days before a pretrial conference is to be held or a pretrial order is due under subsection (b) of Code Section 9-11-16.

(2) CONFERENCE CONTENT; PARTIES' RESPONSIBILITIES. In conferring, the parties shall consider the nature and basis of their claims and defenses and the possibilities for

promptly settling or resolving the case; make or arrange for the disclosures required by paragraph (3) of this subsection; discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan.

(3) REQUIRED DISCLOSURES.

(A) Except as exempted by subparagraph (B) of this paragraph or as otherwise stipulated or ordered by the court, a party shall, without awaiting a discovery request, provide to the other parties:

(i) The name and, if known, the address and telephone number of each individual likely to have discoverable information, along with the subjects of that information, that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) A copy, or a description by category and location, of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) A computation of each category of damages claimed by the disclosing party, who shall also make available for inspection and copying pursuant to Code Section 9-11-34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) For inspection and copying pursuant to Code Section 9-11-34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the civil action or to indemnify or reimburse for payments made to satisfy the judgment.

(B) The following civil actions shall be exempt from initial disclosure:

(i) A civil action for review on an administrative record;

(ii) A forfeiture action in rem;

(iii) A petition for habeas corpus or any other civil action to challenge a criminal conviction or sentence;

(iv) A civil action brought without an attorney by a person in the custody of this state or one of its political subdivisions;

(v) An action to enforce or quash an administrative summons or subpoena;

(vi) An action by this state to recover benefit payments;

(vii) A civil action ancillary to a civil action in another court; and

(viii) An action to enforce an arbitration award.

(C) A party shall make the initial disclosures within 14 days after the parties' conference pursuant to this subsection unless a different time is set by stipulation or court order or unless a party objects during the conference that initial disclosures are not appropriate in that civil action and states the objection in the proposed discovery plan. In ruling on the objection, the court shall determine what disclosures, if any, are to be made and shall set the time for disclosure.

(D) A party that is first served or otherwise joined after the conference required by this subsection shall make its initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(E) A party shall make its initial disclosures based on the information then reasonably available to it. A party shall not be excused from making its disclosures because it has not fully investigated the case, because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures.

(4) *DISCOVERY PLAN.* A discovery plan shall state the parties' views and proposals on:

(A) What changes should be made in the timing, form, or requirement for disclosures under paragraph (3) of this subsection, including a statement of when initial disclosures were made or will be made;

(B) The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(C) Any issues about disclosure or discovery of electronically stored information, including the form in which it should be produced;

(D) Any issues about claims of privilege or of protection as trial preparation materials, including, if the parties agree on a procedure to assert these claims after production, whether to ask the court to include their agreement in an order;

(E) What changes should be made in the limitations on discovery imposed under this subsection or by local rule, and what other limitations should be imposed; and

(F) Any other protective orders that the court should issue.

(5) *EXPEDITED SCHEDULE.* If necessary to comply with its expedited schedule for pretrial conferences, a court may by local rule:

(A) Require the parties' conference pursuant to this subsection to occur less than 21 days before the pretrial conference is held or a pretrial order is due under subsection (b) of Code Section 9-11-16; and

(B) Require the written report outlining the discovery plan to be filed less than 14 days after the parties' conference pursuant to this subsection or excuse the parties from

100 submitting a written report and permit them to report orally on their discovery plan at
101 the pretrial conference."

102 **SECTION 3.**

103 All laws and parts of laws in conflict with this Act are repealed.